



March 5, 2001

Mr. Charles M. Allen, II
Legal Office
Richardson Police Department
P.O. Box 831078
Richardson, Texas 75083-1078

OR2001-0838

Dear Mr. Allen:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 144755.

The Richardson Police Department (the "department") received two requests from the same individual for all offense, arrest, or incident reports pertaining to a particular incident. Initially, you claimed that the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. You now assert that the information is excepted under section 552.108. We have considered the exception you raise and have reviewed the information you submitted.

Section 552.108 excepts from required public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in a conviction or deferred adjudication[.]" Gov't Code § 552.108(a)(2). A governmental body that raises section 552.108 must reasonably explain, if the responsive information does not supply the explanation on its face, how and why section 552.108 is applicable to that information. See Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). Section 552.108(a)(2) is applicable only to a *concluded* case that did not result in a conviction or a deferred adjudication.

In this instance, you inform this office that the requested information relates to a misdemeanor citation and that the charges against the defendant were dismissed. You further assert that "[i]n the alternative, release of the requested documents would interfere with the prosecution of crime should newly discovered evidence be found which would warrant the re-arrest of the defendant before the statute of limitations has expired." You do not indicate, however, that either the department or the prosecutor intends to reopen the investigation.

Moreover, the submitted information includes an Affidavit of Non-Prosecution signed by the complainant, stating her desire that the defendant not be prosecuted and indicating her understanding that the case will not be refiled. Therefore, based on your representation that the case was dismissed and our own review of the information in question, we find that the requested information relates to a concluded case that did not result in conviction or deferred adjudication. We therefore conclude that the requested information is excepted from disclosure under section 552.108(a)(2).

We note, however, that section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). The department must release the kind of information that is considered to be basic front-page offense and arrest report information, including a detailed description of the offense, even if that information does not actually appear on the front page of the offense or arrest report. See *Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing the types of information deemed public by *Houston Chronicle*). The department may withhold the rest of the requested information under section 552.108(a)(2). The department has the discretion, however, to release any other requested information that is not made confidential by law. See Gov't Code § 552.007.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor

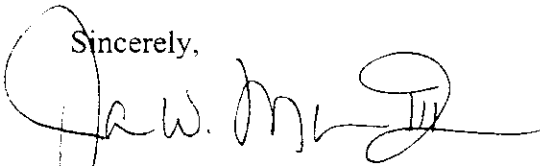
should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'J.W. Morris III', with a large, stylized initial 'J' and a long horizontal flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/er

Ref: ID# 144755

Encl: Submitted documents

cc: Mr. Fred Slice
2406 Diamond Oaks
Garland, Texas 75044
(w/o enclosures)